IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HUMAN GENOME SCIENCES, INC.,	)	
	)	Civil Action No. _____
Plaintiff,	)	
	)	
v.	)	
	)	
AMGEN INC. and IMMUNEX CORP.,	)	
	)	
Defendants.	)	

COMPLAINT

NATURE OF ACTION

1. This is an action under 35 U.S.C. §146 to review the judgment entered July 27, 2007 by the Board of Patent Appeals and Interferences ("the Board") of the United States Patent and Trademark Office ("PTO") in Interference 105,381 ("the '381 Interference").

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction of this action pursuant to 35 U.S.C. § 146 and 28 U.S.C. §§1331 and 1338.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c).

PARTIES

4. Human Genome Sciences, Inc. ("HGS") is a corporation organized and existing under the laws of the State of Delaware and has a place of business in Rockville, Maryland.

5. Upon information and belief, Defendant Amgen Inc. ("Amgen") is a corporation organized and existing under the laws of the State of Delaware and has a place of business at One Amgen Center Drive, Thousand Oaks, California.

6. Upon information and belief, Defendant Immunex Corp. ("Immunex") is a wholly-owned subsidiary of Amgen organized and existing under the laws of the State of Washington and has a place of business in Thousand Oaks, California.

7. Upon information and belief, Defendant Immunex is registered to do business in Delaware.

8. Upon information and belief, Defendants derive substantial revenue from products that are used or consumed in Delaware.

THE PATENT INTERFERENCE

9. This action arises from the judgment entered on July 27, 2007 by the Board in the '381 Interference. A true and correct copy of the judgment, entitled "Judgment – Order to Show Cause," Paper 135, is attached as Exhibit A.

10. The '381 Interference involved patent claims relating to a purified TRAIL-R polypeptide molecule.

11. HGS is the owner by assignment of the entire right, title and interest in and to the invention disclosed in U.S. Patent Application Serial No. 10/005,842 filed December 7, 2001 ("the '842 application"), entitled "Death Domain Containing Receptor 5," in the names of Jian Ni, Reiner L. Gentz, Guo-Liang Yu, and Craig A. Rosen (collectively "Ni"). A copy of the '842 application (without the preliminary amendment) is attached as Exhibit B.

12. Upon information and belief, Defendants are the owner of the entire right, title and interest in and to U.S. Patent No. 6,642,358, granted November 4, 2003 ("the '358 patent") based on Application Serial No. 09/578,392 filed May 25, 2000, entitled "Receptor That Binds TRAIL" in the names of Charles Rauch and Henning Walczak (collectively "Rauch"). Immunex is the recorded assignee of the '358 patent. Upon information and belief, both Amgen and Immunex have actively participated in the prosecution of the '358 patent and the '381 Interference. A copy of the '358 patent is attached as Exhibit C.

13. The Board declared and instituted the '381 Interference.

14. On July 27, 2007, the Board issued the Judgment – Order to Show Cause in the '381 Interference adverse to HGS and Ni, and favorable to Immunex and Rauch, wherein, with its March 26, 2007 Decision – Motions (Paper 101), its May 30, 2007 Decision-Rehearing (Paper 113), and its July 27, 2007 Decision - Order to Show Cause (Paper 134) the Board, and its other decisions, erroneously ruled, contrary to fact and law, *inter alia*, that:

a. Ni was not entitled to substitute Count 1 of the interference with a proposed Count 2, denying Ni Substantive Motion 1;

b. Ni's entitlement to a priority date for proposed Count 2 was moot, dismissing Ni Substantive Motion 2;

c. as to Count 1, Ni was not entitled to the benefit of priority of the March 17, 1997 filing date of provisional application 60/040,846, denying Ni's Substantive Motion 2, in part;

d. all Rauch's involved claims are patentable as not anticipated under 35 U.S.C. § 102(e) by U.S. Patent No. 6,872,568, denying Ni Substantive Motion 3;

e. denying Ni Miscellaneous Motion 4 to exclude certain exhibits from evidence;

f. as to Count 1, Rauch was entitled to the benefit of priority of the March 28, 1997 and June 4, 1997 filing dates of applications 08/829,536 and 08/869,852, respectively, granting Rauch Substantive Motion 1, in part;

g. Ni's involved claims are unpatentable under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,072,047, granting Rauch Substantive Motion 3, in part; and

h. the Board need not reach the issue of whether of Rauch's involved claims were invalid as anticipated under 35 U.S.C. § 102(g) based on Ni's proof of prior invention of the claimed subject matter.

15. HGS is dissatisfied with the Board's decisions and judgment.

16. HGS is dissatisfied with and seeks review and reversal (or in the alternative vacation and remand) of every decision in the '381 Interference in which the Board ruled against Ni, denied or dismissed the relief sought by Ni, or granted the relief sought by Rauch.

17. HGS has not sought review of the Board's Decisions and Final Judgment by the United States Court of Appeals for the Federal Circuit, and pursuant to 35 U.S.C. §

146, has elected to file suit in this Court for dissatisfaction with the Board's Decisions and Final Judgment.

18. The Board's judgment in the '381 Interference was erroneous, and HGS is entitled to judgment in this action correcting the erroneous judgment and rulings of the Board, based on the record before the Board and any additional evidence that HGS may introduce in this action.

19. Ni has priority as to the subject matter at issue in the '381 Interference and Rauch's involved claims are unpatentable, *inter alia*, under 35 U.S.C. § 102(g).

20. Ni's involved claims are patentable.

21. Rauch's involved claims are unpatentable.

WHEREFORE, HGS demands judgment that:

a. The June 27, 2007 decision in Interference 105,381 be vacated;

b. The Board's judgment be reversed;

c. Ni's involved claims are patentable;

d. Rauch's involved claims are unpatentable;

e. all Rauch's involved claims are unpatentable as anticipated under 35 U.S.C. § 102(e) by U.S. Patent No. 6,872,568;

f. Rauch is not entitled to the benefit of priority of the March 28, 1997 and June 4, 1997 filing dates of applications 08/829,536 and 08/869,852, respectively;

g. Ni's involved claims are patentable under 35 U.S.C. § 102(e) as not anticipated by U.S. Patent No. 6,072,047;

h. Ni is entitled to the benefit of priority of the March 17, 1997 filing date of provisional application 60/040,846;

i. Ni has priority as to the subject matter at issue in the '381 Interference under 35 U.S.C. § 102(g), or in the alternative, that the case be remanded to the Board for a determination of priority;

j. Rauch's involved claims are unpatentable under 35 U.S.C. § 102(g), or in the alternative, that the case be remanded to the Board for a determination of priority;

k. Ni is entitled to substitute Count 1 of the interference with a proposed Count 2;

l. Ni has priority as to the subject matter of proposed Count 2;

m. Ni has priority as to the subject matter of proposed Count 1;

n. That every decision in the interference in which the Board ruled against Ni be reversed or in the alternative vacated and remanded;

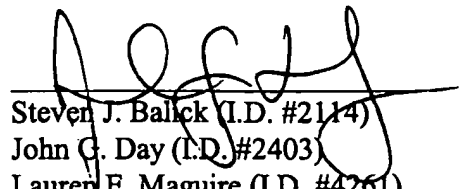
o. That every decision in the interference in which the Board denied or dismissed the relief sought by Ni be reversed or in the alternative vacated and remanded;

p. That every decision in the interference in which the Board granted the relief sought by Rauch be reversed or in the alternative vacated and remanded;

q. Costs and attorneys fees be awarded in favor of HGS against Immunex; and

r. Such other and further relief as may be appropriate.

ASHBY & GEDDES



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Dated: August 30, 2007
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